

## SETTLEMENT AND COMPROMISE AGREEMENT

This Settlement and Compromise Agreement (the "**Agreement**") is made and entered into on this 13<sup>th</sup> day of January 2015 ~~November, 2014~~, by and among the Board of Trustees of the Museum of Contemporary Art, Inc. (the "**Board**") and the City of North Miami, Florida (the "**City**"). The Board and the City are collectively referred to herein as the "**Parties**."

### RECITALS

A. **WHEREAS**, the Board is the Board of Trustees of the Museum of Contemporary Art, Inc.; and

B. **WHEREAS**, the Museum of Contemporary Art, Inc. is a Florida not-for-profit corporation which is a tax exempt entity pursuant to section 501(c)(3) of the Internal Revenue Code ("**MOCA**"); and

C. **WHEREAS**, the City is a municipality which owns the physical facility of the MOCA located at 770 N.E. 125<sup>th</sup> Street, North Miami, Florida 33161 ("**Museum**"); and

D. **WHEREAS**, the construction of the Museum was financed by federal, state, and local grants, upon which ownership of the Museum's physical facility was titled in the City's name; and

E. **WHEREAS**, prior to 1976, the City sought to provide an avenue for exposure to the cultural arts to the North Miami community. It hosted and financially supported various artistic activities, including the annual citywide art festival known as "Arti-Gras;" and

F. **WHEREAS**, in 1976, the City began taking steps to organize a cultural arts program. It officially entered into an agreement with the former Metropolitan Museum, formerly at the Biltmore Hotel, to establish a satellite of that museum. The satellite was located at the Sherman Wynn Center in the City of North Miami. The City retrofitted this Center to function

as a museum. During these early phases, the City funded the museum as part of the Recreation Department's budget; and

G. **WHEREAS**, the first ordinance governing the organization of the North Miami museum and its relationship with the City, Ordinance No. 768 ("**Ordinance No. 768**"), was enacted on October 14, 1980; and

H. **WHEREAS**, Ordinance No. 768 stated in pertinent part that: "The Board of Trustees of the North Miami Museum shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the North Miami Museum;" and

I. **WHEREAS**, in 1981, when the Metropolitan Museum closed, the City incorporated the North Miami Museum and Art Center. The City funded all of the museum's operations. The museum obtained it's Not for Profit status in 1981. In 1981, in addition to all of the contributions the City had made since the early 70's to develop its cultural arts program, the City made the opening contribution to the North Miami Museum in the amount of \$5,000.00; and

J. **WHEREAS**, from 1981 to 1988 the museum operated as COCA, and ultimately in 1996 the name was changed to Museum of Contemporary Art, Inc. ("MOCA"); and

K. **WHEREAS**, following completion of the Museum's construction, the Museum opened its doors in 1996; and

L. **WHEREAS**, in subsequent years, various procedural provisions of the Ordinance were amended but the duties of the Board of Trustees essentially remained the same; and

M. **WHEREAS**, MOCA has been granted accreditation by and complies with the standards and best practices established by the guidelines of the American Association of

Museums ("AAM"); and

N. **WHEREAS**, MOCA has an established Collection Policy (the "**Collection Policy**"); and

O. **WHEREAS**, on December 15, 2008, the Board and the City entered into a Management Agreement ("**Management Agreement**") pursuant to which the Board and the City had certain respective obligations with respect to the management, operation, programing, and maintenance of the Museum's physical facility and programming; and

P. The Management Agreement specifically outlines the obligation of the Board as follows:

- A. BOARD shall sponsor and promote exhibits, special events, functions and activities for the benefit of the public and shall further the development of the MOA. The BOARD shall serve as liaison between the public and the City Manager. The Chairman of the Board shall make all records, reports, financial statements and other necessary information available to the City Manager.
- B. The BOARD shall operate and manage the Museum programs, physical plant and facilities (the "Premises") and all activities conducted thereon on behalf of the City, pursuant to this Agreement entered into by and between the City, as owner of the premises, and BOARD, as operator of such Premises.
- C. The BOARD shall conduct fund-raising projects to assist in the funding of the operational and development costs of the existing museum.
- D. The BOARD shall be subject to the Provisions of City of North Miami City Code §2-61, etc., *seq.* (the "Code"), a copy of which is attached hereto and incorporated herein. The City shall pass no amendments to the Code or the Ordinance which would limit or impair BOARD's performance or

the CITY's obligation this Agreement, so long as BOARD is not in default hereof.

- E. The BOARD shall file any reports and take all action necessary to preserve MOCA's non-profit and tax-exempt status.
- F. The BOARD shall assume all responsibility for the daily maintenance of the premises capable of being performed by their maintenance mechanic.
- G. Although monies are set forth in the City's Budget, the BOARD shall be responsible for administering the payment of all utilities provided to the premises.

Q. **WHEREAS**, the City has invested in the development of a museum in the City of North Miami for nearly forty (40) years; and

R. **WHEREAS**, the Board has alleged that the City breached or defaulted on its obligations under the terms of the Management Agreement; and

S. **WHEREAS**, the City, in turn, has alleged that the Board breached or defaulted on its obligations under the terms of the Management Agreement, breached their fiduciary duty and duty of care, and among other violations, did not comply with ordinances; and

T. **WHEREAS**, on April 7, 2014, MOCA filed its Complaint against the City and other named Defendants in the lawsuit styled *Museum of Contemporary Art, Inc. v. The City of North Miami, Florida, et al.*, Case No. 14008991CA01 (30), which is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "**Lawsuit**");

U. **WHEREAS**, the Lawsuit alleges, among other things, that the City breached its obligations under the Management Agreement; and

V. **WHEREAS**, the City has denied any liability with respect to the Board's claims against the City in the Lawsuit; and

W. **WHEREAS**, the City has filed various responsive motions to the Lawsuit, which have not been heard by the Court, to include a motion to dismiss the complaint. However, the City has never filed its counter-claims; and

X. **WHEREAS**, the Parties participated in a court-ordered mediation conference on June 16 and 17, 2014; and

Y. **WHEREAS**, the City has filed an appeal of non-final orders to the Third District Court of Appeal styled *The City of North Miami, et al., v. Museum of Contemporary Art, Inc.*, Case No. 3D-14-1119, which is stayed until January 3, 2015, pending completion of the court-ordered mediation (the “**Appeal**”); and

Z. **WHEREAS**, the Parties continued to actively mediate the issues in the Lawsuit with the mediator’s assistance and guidance in the months and weeks following the mediation conference; and

AA. **WHEREAS**, as part of the mediation process on August 5, 2014, counsel for the Board and the City executed a confidential Joint Stipulation Regarding FF&E Items to Leave With Plaintiff’s Staff (the “**Joint Stipulation**”), whereby the Board’s staff departed the museum facility located in North Miami, Florida with certain fixtures, furniture, and equipment described herein; and

BB. **WHEREAS**, the Board and certain former MOCA staff departed the Museum on August 6, 2014 pursuant to the terms of the Joint Stipulation; and

CC. **WHEREAS**, pursuant to this Agreement, the Parties now jointly desire to separate themselves into distinct institutions and that the Board permanently discontinue functioning in any capacity on behalf of MOCA; and

DD. **WHEREAS**, the Board has now created the Institute of Contemporary Art, Miami ("ICA"), a Florida not-for-profit corporation which is a tax exempt entity pursuant to section 501(c)(3) of the Internal Revenue Code; and

EE. **WHEREAS**, the Parties desire that the Board and the City be relieved of all obligations under the Management Agreement with respect to management, operation, programing, and maintenance of the Museum, and that MOCA continue its operations and activities as setout in the City Ordinances that created it, and pursuant to the Standards of the AAM Accreditation Program; and

FF. **WHEREAS**, it is understood that MOCA is and shall remain a separate entity from the City; and

GG. **WHEREAS**, the Parties now desire to amicably resolve and settle their disputes and the claims and issues raised in the Lawsuit.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and the mutual covenants and obligations of the Parties under this Agreement, as set forth in their entirety below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated by this reference.

2. **Division of Permanent Art Collection**. The Parties hereby acknowledge that the permanent collection of art consists of the pieces listed on the attached Exhibit "A," subject to inventory, excluding item #130 (Cornell, Joseph — "Untitled"). The Parties agree, that within sixty (60) days of execution of this Agreement, an inventory and inspection shall be conducted prior to the division of the Collection. The associated cost shall be born equally by the Parties.

Any missing or damaged art shall be subject to the appropriate insurance claim and the Parties shall cooperate accordingly, and provide all existing documentation, existing photography or any of the documents that would assist any insurance claims. The Parties agree that subject to the transfer of ownership procedure set forth in paragraph 3 below, City council approval, compliance with AAM established standards for deaccessioning, and MOCA's Collection Policy, all pieces of art denoted as in BLUE color on Exhibit "A" shall be deemed to be the sole and exclusive property of ICA. Further, the Parties agree that subject to the transfer of ownership procedure set forth in paragraph 3 below, all pieces of art from Exhibit "A" which are denoted as in WHITE color shall be retained as MOCA's sole and exclusive property. The division of the art shall remain subject to MOCA retaining its accredited status with the AAM. In the event MOCA's upcoming reaccreditation with the AAM is challenged in any way due to the division of the art with the Board, the Board agrees to restore ownership of any pieces required for MOCA to maintain its reaccreditation or terminate the Agreement ab initio, and in the event of such termination, the parties shall revert to their respective litigation positions.

3. **Storage and Transfer of Ownership.** It is hereby acknowledged by the Parties that the permanent collection of art identified on the attached Exhibit "A" is currently being stored at MuseoVault, and at the Museum. The Board agrees that at all times, all art transferred to its possession shall be maintained and stored according to AAM established standards at the MuseoVault or equivalent facility. Subject to AAM established standards for deaccessioning and MOCA's Collection Policy, within thirty (30) days of the Parties' execution of this Agreement, the Board and MOCA shall make arrangements to transfer possession of the collection to their own separate storage facilities consistent with the division of the permanent collection described in paragraph 2 above. Subject to AAM's standards for transportation and

movement of art, MOCA shall allow the Board reasonable access to the MOCA facility in North Miami to permit the Board to take possession of any pieces of art identified in Exhibit "A" located there. The Board shall take legal title to their portion of the collection pursuant to the procedure to transfer legal ownership set forth below, subject to AAM's established standards for deaccessioning and MOCA's Collection Policy. If the AAM's procedures or MOCA's Collection Policy do not permit immediate transfer of the ownership of any art piece(s) until ICA meets AAM's requirements, the art piece(s) will be held in escrow by MOCA, until such time as ownership of the art piece(s) can be transferred to ICA. Following the Parties' execution of this Agreement, and until such time as the Parties have moved their respective pieces from the permanent collection to their respective storage facilities, all storage costs charged by MuseoVault shall be split and paid equally by the Board and MOCA. **THE PARTIES AGREE, ACKNOWLEDGE, AND UNDERSTAND THAT A MATERIAL INDUCEMENT AND CONDITION OF ENTERING INTO THIS AGREEMENT IS THAT THE TRANSFER OF THE PERMANENT COLLECTION OF ART FROM MUSEOVAULT TO THE BOARD'S AND MOCA'S RESPECTIVE STORAGE FACILITIES AND FROM MOCA'S MUSEUM FACILITY TO THE BOARD'S STORAGE FACILITY, EXCEPT BEING SUBJECT TO AAM'S ESTABLISHED STANDARDS FOR DEACCESSIONING AND MOCA'S COLLECTION POLICY AND PUBLIC RECORDS DISCLOSURE OBLIGATIONS UNDER §§ 119 *ET SEQ.* FLA. STAT., SHALL BE KEPT STRICTLY CONFIDENTIAL AND ALL FACTS CONCERNING SUCH TRANSFER AND DIVISION OF THE COLLECTION SHALL NOT BE DISCLOSED TO ANY THIRD PARTIES, INCLUDING MEMBERS OF THE MEDIA OR PRESS.**



Legal title of ownership of the pieces of art identified in BLUE color on the attached Exhibit "A" shall be transferred from MOCA to ICA as follows: The transfer of legal title of the BLUE pieces from MOCA to ICA shall occur in fifteen percent (15%) increments commencing on March 20, 2015, and shall be completed on a quarterly basis over a period of two (2) years; subject to AAM established standards for deaccessioning and MOCA's Collection Policy.

Except as otherwise provided herein, the Board and MOCA shall be solely responsible for all costs associated with insuring, transporting, conserving, and storing their respective pieces from the permanent collection in accordance with the division of art described in paragraph 2 above and reflected in the attached Exhibit "A".

The division of the art shall remain subject to MOCA retaining its accredited status with the AAM. In the event MOCA's upcoming reaccreditation with the AAM is challenged in any way due to the division of the art with the Board, the Board agrees to restore ownership of any pieces required for MOCA to maintain its reaccreditation, within thirty (30) days of the request, or terminate the Agreement.

4. **Resignation of the Board from MOCA.** Upon the Parties' execution of this Agreement, the Board's current membership shall be deemed for all purposes to have permanently resigned their positions as MOCA's Trustees. The City shall continue to have the exclusive right to appoint membership to MOCA's Board of Trustees. Upon the Parties' execution of this Agreement, the Parties shall have no further obligations to each other under the Management Agreement, and no rights thereunder, and the Management Agreement shall be immediately deemed null, void, and unenforceable.

5. **FF&E.** The Parties hereby acknowledge and agree the items of FF&E identified on the attached Exhibit "1 to Exhibit "B" were removed by the Board and former MOCA staff from

the Museum facility on August 6, 2014, in accordance with the terms of the confidential Joint Stipulation. The Board hereby agrees to pay, and the City hereby accepts on MOCA's behalf, the amount of \$27,500.00 (the "**Settlement Amount**") in full and final satisfaction of MOCA's claim for payment for the items of FF&E removed from the Museum on August 6, 2014, pursuant to the terms of the Joint Stipulation. The Settlement Amount shall be paid by the Board to the City, on MOCA's behalf, to be held in trust By the Law Offices of SquiresBenson, P.L., upon execution of this Agreement. The City agrees on MOCA's behalf to deliver to the Board within ten (10) days of the City's receipt of the Settlement Amount a Bill of Sale executed by the City's authorized representative, on MOCA's behalf, in the form attached hereto as Exhibit "B."

6. **Accounts Payables and Financial Statements.** The Parties hereby acknowledge that the Board currently has outstanding invoices and accounts payables with various third-party vendors as reflected in the attached Exhibit "C." At the time of execution of this Agreement, the Board shall provide proof of payment of all outstanding bills incurred by the Board in the name of MOCA.

**Financial Statements:**

- i. Except for the Strategic Reserve Account, as a condition precedent to executing this Agreement, the Board shall provide all financial statements available and complete bank statements of all MOCA accounts previously managed by the Board.
- ii. Should MOCA require any information for purposes of an audit, the Board shall provide all financial and bank statements, including those for the Strategic Reserve Account.

7. **URLs.** MOCA shall retain exclusive and unrestricted use and control of the URL “mocanomi.org.” Upon execution of this Agreement, the Board agrees to transfer to MOCA ownership and control of the URLs identified in the attached Exhibit “D”. Subject to AAM established standards for deaccessioning and MOCA’s Collection Policy, MOCA agrees to update and remove any content from mocanomi.org consistent with the terms of this Agreement, including but not limited to the Parties’ agreed upon division of the art collection, the division of intellectual property, and the Parties’ agreement regarding the exhibition and event history.

8. **Intellectual Property.** The Parties agree that MOCA shall retain all intellectual property rights relating to the names “MOCA”, “Museum of Contemporary Art, North Miami”, and “Museum of Contemporary Art, Inc.” Except as provided below, all intellectual property currently owned by MOCA shall remain with MOCA. The following intellectual property shall remain the Board’s exclusive property:

- a. The Board shall retain all intellectual property rights relating to membership programs developed by the Board including the program Optic Nerve.
- b. MOCA and the Board shall share Intellectual property of exhibition photography, so long as this intellectual property is used solely for not-for-profit purposes. Subject to AAM established standards and MOCA’s historical requirements, the Board shall retain exclusive intellectual property rights of photography showing Board members and key Board affiliated donors.
- c. MOCA shall be provided with all exhibition photography in the Board’s possession necessary to transfer ownership of the permanent collection, subject to AAM established standards for deaccessioning and MOCA’s Collection Policy and the Agreement between the Parties concerning splitting the collection.
- d. MOCA shall be given all trademark rights to the MOCA logo and Women on the Rise!

- e. Each Party will have the right to fully develop their own social media and each Party shall be entitled to retain their respective social media creations (FaceBook, Twitter, and Instagram).

9. **Museum Store, Library, and Catalogs.** The Parties agree that the Contents (“Contents”) of the Museum Store, as of August 6, 2014, shall remain with the Board. MOCA shall allow the Board reasonable access to the Museum facility located in North Miami so that the Board may take possession of the contents of the Museum Store. The library and its contents, will remain MOCA’s exclusive property. The Board and MOCA shall share branded MOCA catalogs so long as they are used for not-for-profit purposes. The Fifteenth Anniversary Collection Books shall be retained by the Board.

10. **Funds, Endowments, and Grants.** The Parties agree the current grant funding dedicated to MOCA shall be divided as follows:

**MOCA:**

- State of Florida \$150,000.00 grant.
- The Education fund (Acct # 379; approximately \$568,000.00) will remain with MOCA in honor of the local community.
- The North Dade Medical Foundation (Acct. #314; approximately \$431,000.00) will remain with MOCA in honor of the education of its children.

**Board:**

- Ziff (Acct #625; approximately \$131,000.00) was donated for talks by a patron with affinity for the Board, and will remain with the Board.
- Arnold Katz Foundation (Acct #414; approximately \$129,000.00) was given by a Board member, and will remain with the Board.

- The Liebowitz Foundation (Acct #322; approximately \$164,000.00) will remain with the Board.
- The Parties acknowledge that the Knight Foundation endowment has been withdrawn. The City or MOCA may apply on its own, if it chooses to do so, for funding from the Knight Foundation as the endowment funds are not under the Board's control.
- The Strategic Reserve (Acct. #448) will remain with the Board.

11. **Museum.** The Museum's physical facility belongs to the City and, as such, it is agreed that ownership of the physical facility and real property shall remain with the City, not the Board.

12. **Releases.** By signing this Agreement, except for the obligations under this Agreement, and except as specifically provided in the following sentences, the Board agrees for themselves and their employees, officers, directors, parents, sisters, subsidiary entities, and its heirs, executors, administrators, predecessors, successors and assigns to release, acquit, and forever discharge and release MOCA, the Continuing MOCA, and City, their insurers, agents, employees, principals, servants, successors, predecessors, parents, sisters, subsidiaries, affiliates, heirs, executors, and administrators of and from any and all claims, actions, causes of action, demands, rights, damages, attorneys' fees and costs, expenses, loss of service, expenses and compensation whatsoever, which the Board now has or in any way may have growing out of any and all known and unknown damages and the consequences thereof, and all known and unknown, foreseen and unforeseen circumstances, claims, damages, and losses, through the date this Agreement is fully executed and signed by the last Party, including but not limited to any

claims or potential claims whatsoever resulting from the allegations which are the subject of the Lawsuit. The Board, further indemnifies and holds harmless the City, the continuing MOCA, their respective employees and assigns from all liability for suits filed, but not served on the City related to MOCA's operations from the Lawsuit's date through execution of this Agreement. This applies to all related costs and attorneys' fees.

By signing this Agreement, except for the obligations under this Agreement, and except as specifically provided in the following sentences, MOCA, the continuing MOCA, and the City agree for themselves and their employees, officers, directors, parents, sisters, subsidiary entities, and its heirs, executors, administrators, predecessors, successors and assigns to release, acquit, and forever discharge and release the Board, its insurers, agents, employees, principals, servants, successors, predecessors, parents, sisters, subsidiaries, affiliates, heirs, executors, and administrators of and from any and all claims, actions, causes of action, demands, rights, damages, attorneys' fees and costs, expenses, loss of service, expenses and compensation whatsoever, which MOCA, the Continuing MOCA, and the City now have or in any way may have growing out of any and all known and unknown damages and the consequences thereof, and all known and unknown, foreseen and unforeseen circumstances, claims, damages, and losses, through the date this Agreement is fully executed and signed by the last Party, including but not limited to any claims or potential claims whatsoever resulting from the allegations which are the subject of the Lawsuit. MOCA, the continuing MOCA, and the City, further indemnify and hold harmless the Board, their respective employees and assigns from all liability for suits filed, but not served on the Board related to MOCA's operations from the Lawsuit's date through execution of this Agreement. This applies to all related costs and attorneys' fees.

13. **Dismissal of Lawsuit and Appeal.** Upon execution of this Agreement, the Board shall provide the Law Offices of SquiresBenson, P.L., a Notice of Voluntary Dismissal of the Lawsuit, which will be held in trust for two (2) days before filing. Upon execution of this Agreement, the City shall provide the Law Offices of SquiresBenson, P.L., a Notice of Dismissal of the Appeal, which will be held in trust for two (2) days before filing. The Parties shall bear their own attorneys' fees, costs, and expenses in connection with the Lawsuit.

14. **Binding Agreement.** This Agreement is binding upon, and shall inure to the benefit and detriment of, the Parties to this Agreement, including their heirs, executors, personal representatives, administrators, assigns, successors in interest, predecessors in interest, parents, subsidiaries, affiliates, and anyone claiming by, through and under any one of the foregoing. The individuals executing this Agreement as representatives of the Parties acknowledge, warrant, and represent that they are the official representatives of the Parties and that they possess full and complete authority to consent on behalf of and bind the Parties to the full and faithful performance of all conditions, terms, provisions, covenants and warranties contained in this Agreement.

15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Florida. If this Agreement becomes the subject of, or is involved in, any proceeding or action for any reason whatsoever, whether administrative hearing, arbitration, mediation, or civil, bankruptcy, or appellate litigation, the prevailing party shall recover its expenses, costs and reasonable attorneys' fees incurred in such proceeding or action from the losing party. The Parties agree that the Court in which the Lawsuit was filed shall retain jurisdiction to enforce the terms of this Agreement.

16. **Counterparts.** This Agreement may be executed in any number of identical counterparts (including by facsimile or .PDF transmission), which, when taken together, will constitute collectively one agreement, but in making proof of this Agreement it will not be necessary to produce or account for more than one such counterpart executed by the party to be charged.

17. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and conditions will remain in full force and effect and will in no way be affected, impaired or invalidated.

18. **Additional Documentation.** The Parties agree to execute any additional documents reasonably necessary or desirable to implement the provisions of this Agreement. All documents shall be reviewed and agreed to by all Parties including the City Council, approval thereof not be unreasonably withheld.

19. **Confidentiality and Non-Disparagement.** Subject to Chapter 119, Florida Statutes, the terms of this Settlement Agreement shall remain strictly confidential, except to the extent necessary for the Parties to disclose the terms of this Settlement Agreement to their attorneys or accountants, to enforce any covenant contained in, or right created by, this Agreement, or as required by applicable law.

The Parties agree that they shall not in any way, shape, or form disparage the other Party or disseminate or cause to be disseminated any disparaging information about the Party to any third party or entity, including media organizations and members of the press. It is further agreed that neither Party shall, in any way, disseminate, directly or indirectly, in any public or private manner, to any third party, any photographs, videos, audio recordings, emails, written



communications, or any other materials or information about or relating to the other Party, except as may be required by law (including, but not limited to, responding to a third party subpoena).

The provisions and prohibitions of this Confidentiality and Non-Disparagement clause shall be effective as of the date that this agreement is last executed by the Parties hereto. In the event that the provisions and/or prohibitions of this confidentiality and non-disparagement clause are breached or violated by either Party, sanctions shall be assessed by the appropriate Court in an amount deemed appropriate by that Court. In addition, both Parties retain any and all rights to file an action for damages against the other Party based upon any violation of this paragraph. The Parties specifically acknowledge, agree, and understand that the presiding judge in the case shall have contempt powers over the Parties and any third parties with respect to the Parties' obligations set forth in this section. The Parties acknowledge and stipulate that the Parties have the ability to comply with the requirements and obligations set forth in this section.

20. **Miscellaneous.** The titles and headings preceding the text of the sections of this Agreement have been inserted solely for convenience of reference and do not affect the Agreement's meaning or effect. Words of the neutral gender in this Agreement are to be construed to include words of the masculine and feminine genders, and words in the singular form shall include the plural and vice versa. This Agreement constitutes and contains the final, entire agreement of the Parties with respect to the rights, obligations and liabilities of the Parties and supersedes all prior discussions, negotiations, correspondence, communications, statements, representations, promises, inducements, understandings and agreements, if any, whether oral or written, between the Parties, including their attorneys, with respect to the subject matter of this Agreement; and

This Agreement may be modified only by an agreement in writing signed by all Parties to this Agreement. No party will be deemed to have waived any right or remedy under this Agreement by failing to exercise such right or remedy. Any Party may waive or modify any obligation owed to it by another Party, or any condition to the Party's own performance, under this Agreement only by a signed writing; and

Neither party will seek an appraisal; and

The Board agrees to provide MOCA all of its corporate records, including but not limited to minutes, Board resolutions, and the corporate seal, upon execution of this Agreement.

**For — The Board of Trustees:**

**By:**

Signature: \_\_\_\_\_

Print Name: Suzanne Weaver

**The City of North Miami, Florida for the  
Museum of Contemporary Art, Inc.:**

**By:**

Signature: \_\_\_\_\_

Print Name: Aleem A. Ghany

FORM APPROVED  
OFFICE OF CITY ATTORNEY  
Date 01/13/15